

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE:

**MARK PEEDIN,**  
**CLEOFÉ S. PEEDIN,**

Debtors.

Case No: B-0981885 C-13D

MOTION BY STANDING TRUSTEE TO MODIFY PLAN

NOW COMES Richard M. Hutson, II, Standing Trustee in the above-captioned case, and respectfully shows unto the Court as follows:

1. On October 23, 2009, Mark and Cleofe Peedin (“the Debtors”) filed a voluntary petition under Title 11, Chapter 13, of the United States Code in the Bankruptcy Court for the Middle District of North Carolina.
2. On October 23, 2009, Richard M. Hutson, II, was appointed Standing Trustee for the above-referenced case and is duly acting in this capacity.
3. On February 17, 2010, the Debtors’ plan was confirmed to pay \$4,491.00 per month for 60 months and to pay secured and priority claims in full and a 0% dividend to general unsecured claims.
4. The Debtors listed current monthly income (“CMI”) on Official Form B22C (“Form B22C”) of approximately \$10,177.82; therefore, the Debtors have income above the median income for a household of their size in the state of North Carolina.
5. On Form B22C, the Debtors listed a deduction on line #47(a) for Duke University Federal Credit Union (“DUFCU”) in the amount of \$1,004.00 for mortgage payments on a second deed of trust.
6. The Trustee filed an adversary proceeding to avoid the lien of DUFCU pursuant to 11 U.S.C. §544(a). The adversary proceeding has been resolved by Consent Judgment providing DUFCU with an unsecured claim in the amount of \$105,131.68.

7. The Debtors' confirmed plan provides that, upon avoidance of DUFCU's lien, the Trustee reserves the right to request modification of the plan to provide a net disposable income requirement of \$21,636.00 to general unsecured creditors.
8. The Trustee moves to modify the Debtors' plan pursuant to 11 U.S.C. §1329 to disallow the deduction for DUFCU listed in Form B22C on line #47(a) and to reflect a payout to general unsecured creditors of \$360.61 per month for 60 months as required by 11 U.S.C. §1325(b) or approximately \$21,636.00 to unsecured creditors.

WHEREFORE, the undersigned respectfully prays the Court for the following relief:

1. That the Debtors' plan be modified to pay at least \$21,636.00 to general unsecured creditors; and
2. For such other and further relief as the Court may deem just or proper.

This the 21<sup>st</sup> day of April, 2010.

s/Benjamin E. Lovell

Benjamin E. Lovell

Attorney for the Trustee

P.O. Box 3613

Durham, N.C. 27702

State Bar No: 23266

Telephone No: (919) 688-8065

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon John T. Orcutt, Esq., 6616-203 Six Forks Rd., Raleigh, NC 27615, Mark & Cleofe Peedin, 3818 Holly Springs Ct., Hillsborough, NC 27278, and Franklin Drake, Esq., PO Box 26268, Raleigh, NC 27611, by depositing a copy of same in the United States Mail, postage prepaid, and in the manner prescribed by Rule 5 of the Federal Rules of Civil Procedure.

This 21<sup>st</sup> day of April, 2010.

s/Benjamin E. Lovell  
Benjamin E. Lovell, Esq.  
Attorney for the Standing Trustee